

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File No. EB-00-IH-0014a
	)	NAL/Acct. No. 2001320800018
WLDI, Inc.	)	FRN Nos. 0004-5558-50 and
	)	0004-9774-35
Licensee of Station WCOM(FM),	)	
Bayamon, Puerto Rico	)	Facility ID # 54471

**ORDER**

**Adopted: August 1, 2002**

**Released: August 2, 2002**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Order, we deny the Petition for Reconsideration filed by WLDI, Inc., licensee of WCOM(FM), Bayamon, Puerto Rico, in which WLDI, Inc. sought to have the Enforcement Bureau (“the Bureau”) rescind or, in the alternative, reduce a \$16,800 forfeiture for broadcasting indecent material. For the reasons discussed below, we reaffirm the forfeiture.

**II. BACKGROUND**

2. On October 18, 19 and 20, 1999, radio station WCOM(FM) broadcast indecent material. At the time of the broadcasts, Chancellor Media Corp. owned WCOM’s licensee, WLDI, Inc. Three months later, on January 14, 2000, Chancellor transferred ownership of WLDI, Inc. to the Spanish Broadcasting System, Inc. (“SBS”). At all times relevant to this matter, WLDI, Inc. was the licensee of WCOM.

3. The Enforcement Bureau’s Investigations and Hearings Division (“IHD”) initiated an investigation into the allegedly indecent broadcasts by inquiry letter sent to WLDI, Inc. on October 3, 2000.<sup>1</sup> Counsel for SBS responded to IHD’s letter and explained that SBS had not assumed control of WLDI, Inc. until the transfer of WLDI, Inc. stock on January 14, 2000 and, since the allegedly indecent broadcasts occurred when SBS had no “control over the programming or the employees of” WCOM in October, SBS would take “no responsibility for the actions of the station, its management or its employees.”<sup>2</sup> Following SBS’s failure to respond substantively to the inquiry letter, IHD again directed WLDI, Inc. to respond to its original inquiries. SBS responded on December 11, 2000, and acknowledged only that while the

---

<sup>1</sup> See Letter from Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau to WLDI, Inc., Licensee of WCOM(FM), Bayamon, P.R., EB Docket No. EB-00-IH-0014a (Oct. 3, 2000).

<sup>2</sup> See Letter from Allan G. Moskowitz, Kaye, Scholer, Fierman, Hays & Handler, LLP to Magalie Roman Salas, Secretary, Federal Communications Commission, EB Docket No. EB-00-IH-0014a (Oct. 17, 2000).

broadcasts occurred during WCOM's morning program, it could not conclude that they occurred on the dates alleged.<sup>3</sup>

4. On February 8, 2001, the Enforcement Bureau found that the material broadcast by WCOM on October 18, 19 and 20, 1999 was apparently indecent and proposed a forfeiture of \$21,000 for the apparently willful and repeated broadcast of indecent material on three occasions.<sup>4</sup> The Bureau found that the broadcast language contained graphic, patently offensive references to sexual activities or sexual organs and that WCOM broadcast the material between 6 a.m. and 10 a.m., at a time when there was a reasonable risk that children might be in the audience.<sup>5</sup>

5. WLDI, Inc. responded to the NAL on March 12, 2001 and requested that the Bureau rescind or, in the alternative, reduce the proposed forfeiture. While WLDI, Inc. admitted that WCOM broadcast the apparently indecent material, it reiterated its contention that the Bureau should rescind or reduce the proposed forfeiture since ownership of WLDI, Inc. changed following the broadcasts. In the alternative, WLDI, Inc. also argued that the \$21,000 proposed forfeiture should be reduced since WLDI, Inc. had no history of violating Commission rules.

6. On May 11, 2001, the Bureau issued a Forfeiture Order in which it rejected WLDI, Inc.'s contention that it should not be held responsible for the violations since its ownership changed subsequent to the indecent broadcasts.<sup>6</sup> The Bureau agreed, however, that the proposed forfeiture should be reduced based on a lack of prior offenses. The Bureau concluded that WLDI, Inc. violated the Commission's Rules when WCOM broadcast the indecent material and assessed a \$16,800 forfeiture. One month later, WLDI, Inc. filed the instant Petition for Reconsideration of Forfeiture Order and argued that the Bureau should rescind the forfeiture or, in the alternative, reduce the forfeiture amount further.<sup>7</sup> For the reasons described below, we deny WLDI, Inc.'s Petition.

### III. DISCUSSION

7. Reconsideration of an order is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.<sup>8</sup> A petition that simply

<sup>3</sup> See Letter from Allan G. Moskowitz, Kaye, Scholer, Fierman, Hays & Handler, LLP to Magalie Roman Salas, Secretary, Federal Communications Commission, EB Docket No. EB-00-IH-0014a (Dec. 11, 2000). In the letter, SBS reserved the right to challenge the Commission's staff conclusion that it is or was responsible for the allegedly indecent broadcasts in October 1999.

<sup>4</sup> *WLDI, Inc.*, EB-00-IH-0014a, *Notice of Apparent Liability*, 16 FCC Rcd 3011 (Enf. Bur. 2001) ("NAL").

<sup>5</sup> NAL at ¶ 8; see also 47 C.F.R. § 73.3999

<sup>6</sup> See *WLDI, Inc.*, EB-00-IH-0014a, *Forfeiture Order*, DA 01-1194 (rel. May 11, 2001) ("Forfeiture Order").

<sup>7</sup> See *WLDI, Inc., Licensee of Station WCOM(FM), Bayamon, Puerto Rico*, Petition for Reconsideration of Forfeiture Order, EB-00-IH-0014a (filed June 11, 2001) ("Petition"). WLDI, Inc.'s filed the Petition pursuant to Section 1.106(a) of the Commission's Rules, 47 C.F.R. § 1.106.

<sup>8</sup> See *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257, para. 2 (Enf. Bur. 2000) ("*EZ Sacramento*") (citing *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v.*

reiterates arguments previously considered and rejected will be denied.<sup>9</sup> WLDI, Inc. claims that the Bureau should reconsider the Forfeiture Order or, in the alternative, reduce the amount of the forfeiture. WLDI, Inc., however, raises no new facts or arguments regarding the violations that form the basis for the forfeiture. Accordingly, we deny WLDI, Inc.'s Petition for Reconsideration. We take this opportunity, however, to summarize and elaborate briefly on our prior order.

8. WLDI, Inc. attacks Commission precedent (which WLDI, Inc. deems "inimical to rational public policy") that a licensee is not absolved of responsibility when there is a transfer of control subsequent to a violation. WLDI, Inc. claims, just as it did in its response to the NAL, that this precedent unfairly punishes the "innocent purchaser" of the licensee and "furthers no rational public policy." These contentions, however, are irrelevant to our determination that a forfeiture is warranted. WLDI, Inc. was the licensee of WCOM when WCOM broadcast the indecent material, and it remained licensee after the transfer of control to SBS. WLDI, Inc. concedes this<sup>10</sup> and in these situations, the Commission has stated clearly and unequivocally that liability for violations of Commission rules inures to the licensee regardless of an intervening transfer of control.<sup>11</sup> Indeed, the Commission has recently reconfirmed this principle: "The fact that the ownership of the company changed hands does not affect the company's liability."<sup>12</sup> We therefore conclude that WLDI, Inc. is responsible for the indecent broadcasts and liable for the forfeiture.

9. We note that, of course, the Bureau has no authority to alter or depart from Commission precedent. Contrary to WLDI, Inc.'s arguments, however, Commission precedent in this area is good public policy. Holding an entity responsible for its violation of Commission rules regardless of a subsequent transfer of control encourages compliance by the entity's employees, to the benefit of the public. In many cases, the entity's employees remain with the company after a transfer of control. If the employees (or the prospective transferor) knew that the licensee would be insulated from forfeiture actions for violations preceding a transfer of control, they would have less incentive to comply with the law, to the detriment of the public interest. There is nothing unusual or unfair in making WLDI, Inc. liable for the otherwise appropriate forfeiture regardless of the lack of any involvement in the violation by SBS. In sum, we find no

---

*FCC*, 351 F.2d 824 (D.C.Cir. 1965)), *aff'd EZ Sacramento, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 4958 (2001).

<sup>9</sup> *EZ Sacramento*, 15 FCC Rcd at 18257, para. 2.

<sup>10</sup> *See* Petition at 2, para. 4.

<sup>11</sup> *See Winslow Communications, Inc.*, 45 FCC2d 662 (1974) (rejecting licensee's argument that it should not be liable for violation when violation occurred prior to transfer of control of licensee's stock.).

<sup>12</sup> *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 4958, 4959, para. 3 (2001) (Commission denial of application for review of Enforcement Bureau order denying reconsideration of two forfeiture orders), *recon. dismissed EZ Sacramento, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 15605 (2001).

basis to rescind or further reduce the forfeiture.<sup>13</sup>

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed June 11, 2001 by WLDI, Inc. IS DENIED.

11. IT IS FURTHER ORDERED THAT a copy of this ORDER shall be sent by Certified Mail, Return Receipt Requested to Allan G. Moskowitz, Kaye Scholer, LLP, 901 Fifteenth Street, N.W., Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

---

<sup>13</sup> SBS, of course, could have negotiated an indemnification clause with respect to forfeitures for violations prior to the transfer of control. It also could have negotiated the purchase price with an eye toward possible liability for WLDI, Inc.'s violations, in light of pre-existing Commission precedent. It also could have negotiated an assignment of license as opposed to a transfer of control to insulate itself from liability for WLDI, Inc.'s violations. *See Flambo Broadcasting, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 23429 (Enf. Bur. 2000) and *Americom Las Vegas Ltd. Partnership*, Memorandum Opinion and Order, 15 FCC Rcd 13550 (Enf. Bur. 2000). The fact that it may have not taken such steps to protect itself does not make it unfair for SBS to be subject to pre-existing Commission precedent regarding forfeiture liability of its corporate subsidiary WLDI, Inc.